IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 22495 of 2006(C)

AGAINST THE ORDER DATED 07/06/2006 IN EA.NO.155/2005 IN OS.274/1994 of SUB COURT, THIRUVALLA

.....

PETITIONER: PETITIONERS/JUDGMENT DEBTORS 1 AND 4/DFNDTS.1&4:

---

1. MARIAMMA CHACKO,
KALLUMANNIL VEEDU, PADINJATTETHARA,KUTTOOR VILLAGE

2. MOHAN JACOB,
KALLUMANNIL VEEDU, PADINJATTETHARA,KUTTOOR VILLAGE

BY ADV. SRI.A.K.ALEX

RESPONDENTS: RESPONDENT NO.1/DECREE HOLDER/PLAINTIFF:

GEORGE KURIAN,
VALIYACHIRAYIL VEEDU, CHEKKIDIKADU,
EDATHUA, KUTTANADU.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXTS:

EXT.P1: JUDGMNET OF THE ADDL. SUB COURT, ALAPPUZHA DT. 18.9.1996 IN O.S.274/94

EXT.P2: DECREE OF THE ADDL. SUB COURT, ALAPPUZHA DT.18.9.2006 IN O.S.274/94

EXT.P3: TRUE COPY OF E.A. 64/2005 OF THE SUB COURT, THIRUVALLA WITH THE ACCOMPANYING AFFIDAVIT IN O.S.274/94

EXT.P4: SALE DEED NO: 2564/83 DT.15.9.83 OF THE THIRUVALLA SUB REGISTRARS OFFICE IN THE NAME OF THE 2ND PETITIONER

EXT.P5: -DO- OF THE LAND TAX RECEIPT DT. 21.5.97 IN THE NAME OF THE 2ND PETITIONER FOR THE PERIOD 1997-98

EXT.P6: -DO- OF THE LAND TAX RECEIPT DT. 2.6.2006 PAID FOR THE PERIOD 2006-2007 BY 2ND PETITIONER

EXT.P7: -DO- OF THE OBJECTION FILED BY PETITIONES TO THE ABOVE MENTIONED I.A. 64/2005 OF THE SUB COURT, THIRUVALLA IN O.S.274/94

EXT.P8: -DO- OF E.A. 155/2005 OF THE SUB COURT, THIRUVALLA IN O.S.274/94 WITH THE ACCOMPANYING AFFIDAVIT

EXT.P9: -DO- OF THE OBJECTION FILED BY THE RESPONDENT TO THE ABOVE MENTIONED E.A. 155/2005

EXT.P10: -DO- OF THE ORDER DT. 7.6.2006 IN E.A. 155/2005 OF THE SUB COURT, THIRUVALLA IN O.S.274/94

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.22495 OF 2006 C

Dated this the 25th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Ext.P10 order in E.P.3/2004 in O.S.274/1994 of the Subordinate Judge's Court, Thiruvalla. The suit was one for realisation of the amount due from one Chacko and it was instituted against the legal representatives of deceased Chacko. The suit was decreed whereby the plaintiff in the suit was entitled to recover the amount from the assets of the deceased Chacko in the hands of the legal representatives. Now execution petition is filed with respect to an item of property by sale of the same contending that it is the property of deceased Chacko that has come to the hands of the legal representatives. The fourth judgment debtor contended that the property exclusively belong to him and it is not an asset of deceased Chacko and therefore, in execution of the decree it cannot be proceeded against. Both sides produced documents. Unfortunately on the hearing date there was no effective representation on the side of the judgment debtors. Therefore, the court proceeded to decide the matter and passed the impugned order. The court posted it for proclamation and sale and then an application to review

that order was filed which was negatived by the court below. The fact to be considered and decided in this case is whether the property which is now sought to be sold in execution of the decree is the property in the hands of the legal representatives of deceased Chacko as the assets of him or is the independent property of the fourth judgment debtor. Both sides have produced the document. But unfortunately those documents are not seen considered and no evidence is also seen adduced. Therefore, interest of justice requires the matter to be considered after permitting the parties to adduce both oral and documentary evidence in support of their respective contentions and the court below be directed to dispose of the matter in accordance with law. So the order under challenge is set aside and E.A.64/05 is remitted back for consideration as directed in the previous paragraph of the judgment. Parties are directed to appear before the court below on 23.8.2007. It is made clear that till final decision is taken on the matter the execution shall not be proceeded with. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj